

**UNITED STATES DISTRICT COURT
FOR
MIDDLE DISTRICT OF PENNSYLVANIA**

THOMAS RAY BENJY,
Plaintiff

v.

CIVIL ACTION - LAW

AMAZON.COM, INC. and
ON-DEMAND PUBLISHING, LLC
d/b/a BOOKSURGE,
Defendants

NO.

COMPLAINT/NATURE OF ACTION

1. This is an action for Copyright Infringement by an author seeking statutory damages for the unauthorized publication and distribution of his copyrighted literary work.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 17 U.S.C. § 101 *et seq.*

3. Venue is appropriate in the Middle District of Pennsylvania ("Middle District") as we believe Defendants conduct substantial business activities within the Middle District.

PARTIES

4. Plaintiff, THOMAS RAY BENJEY ("BENJEY"), is a citizen of the Commonwealth of Pennsylvania and an adult individual residing at 546 Springville Road, Carlisle, Cumberland County, Pennsylvania 17015.

5. Upon information and belief, Defendant, AMAZON.COM, INC. ("AMAZON") is a corporation organized and existing under the laws of the state of Washington with a mailing address of 1200 12th Ave. South, Suite 1200, Seattle, Washington, 98144-2734.

6. Upon information and belief, Defendant, ON-DEMAND PUBLISHING, LLC is a limited liability company organized and existing under the laws of the state of South Carolina, trading and doing business under the fictitious name BOOKSURGE ("BOOKSURGE") which has a mailing address of 1200 12th Ave. South, Suite 1200, Seattle, Washington, 98144-2734.

7. Plaintiff believes and therefore avers that at all times relevant to the causes of action giving rise to this Complaint Defendant BOOKSURGE was a wholly owned subsidiary of and controlled by Defendant AMAZON.

FACTUAL AVERMENTS AND LEGAL ALLEGATIONS

8. In July 2005, BENJEY substantially completed his first draft manuscript for a historical biography of William 'Lone Star' Dietz, the flamboyant early

coach of the Boston Redskins (now the Washington Redskins) football team, which BENJEY entitled "Keep A-goin: The Life of Lone Star Dietz" (hereinafter the "Dietz Biography").

9. On or about August 30, 2005, BENJEY entered into an agreement with Defendant BOOKSURGE whereby BOOKSURGE agreed to provide print services for 50 copies of the advance reading copies ("ARCs") of the Dietz Biography.

10. The aforesaid agreement between BENJEY and BOOKSURGE expressly provided that the 50 copies of the ARCs of the Dietz Biography to be printed by BOOKSURGE were not to be sold to the general public, but rather said BOOKSURGE copies were intended to be provided without charge to certain reviewers, scholars, libraries and historians as a way to generate publicity, feedback and interest in the Dietz Biography.

11. On or about December 27, 2005 BENJEY received a printer's proof of the ARCs of the Dietz Biography from BOOKSURGE which BENJEY determined contained significant margin alignment and other printing errors which BENJEY felt greatly detracted from the printed presentation.

12. Despite complaints from BENJEY, BOOKSURGE claimed it was unable to remedy the aforesaid margin alignment and other printing errors,

whereupon on or about January 15, 2006 BOOKSURGE shipped to BENJEY the 50 copies of the ARCs of the Dietz Biography containing the aforesaid margin alignment and other printing errors.

13. During late 2005 and early 2006, BENJEY continued to make changes and refinements to his manuscript of the Dietz Biography which ultimately resulted in a final draft which text varied in content from the first draft manuscript as printed and delivered by BOOKSURGE.

14. Dissatisfied with the print quality of the ARCs as printed and delivered by BOOKSURGE, BENJEY elected to have the final draft of the Dietz Biography, which was to be offered for commercial sale to the public, printed by Sheridan Books and distributed to retailers by Baker & Taylor Books or publisher Tuxedo Press (collectively referred to as "Sheridan Books").

15. On April 7, 2006, BENJEY received copyright protection from the United States Copyright Office for his final draft of the Dietz Biography. A copy of BENJEY's Copyright Certificate with regard to the Dietz Biography is attached as Exhibit "A".

16. Following the aforesaid grant of copyright protection to BENJEY for the final draft of the Dietz Biography and its printing by Sheridan Books, the Dietz Biography was placed for sale to the general public whereupon it began to generate demand from the buying public including several orders for the Dietz

Biography being placed through the online web services of Defendant AMAZON.

17. Without the knowledge or consent of BENJEY, and also without payment of any compensation to BENJEY, AMAZON undertook to fulfill certain of its online orders for the Dietz Biography not by providing copies from Sheridan Books but rather by obtaining copies of the ARCs of the Dietz Biography from Defendant BOOKSURGE who knew they were not authorized to print final copies of the Dietz Biography and thereupon delivering those BOOKSURGE copies of the ARCs of the Dietz Biography to AMAZON's customers in fulfillment of the orders for the Dietz Biography placed by Amazon customers.

18. Upon information received it is believed and therefore averred that Defendant AMAZON sold and delivered at least fourteen (14) copies of the BOOKSURGE version of the ARCs of the Dietz Biography in various media forms rather than the Sheridan Books published version.

19. Plaintiff believes and therefore avers that the actions of AMAZON and BOOKSURGE with regard to the unauthorized copying and distribution of the Dietz Biography constitute infringement of BENJEY's copyright under 17 U.S.C. § 504(c).

WHEREFORE, Plaintiff, THOMAS RAY BENJEY, requests this Honorable Court to issue an Order:

(a) Granting Plaintiff THOMAS RAY BENJEY a formal audit and accounting of all sales with regard to the Dietz Biography made by either Defendant AMAZON and/or Defendant BOOKSURGE;

(b) Awarding Plaintiff THOMAS RAY BENJEY statutory damages if infringement was not willful in the amount of fifteen thousand (\$15,000.00) Dollars for each copy (currently \$210,000 for the 14 known books) of the Dietz Biography found by the aforesaid audit and accounting to have been sold or distributed by Defendant AMAZON and/or Defendant BOOKSURGE in violation of Plaintiff THOMAS RAY BENJEY's copyright;

(c) Awarding Plaintiff THOMAS RAY BENJEY statutory damages if infringement was willful in an amount deemed appropriate by the Court for the Dietz Biography found by the aforesaid audit and accounting to have been sold or distributed by Defendant AMAZON and/or Defendant BOOKSURGE in violation of Plaintiff THOMAS RAY BENJEY's copyright.

(d) Awarding Plaintiff THOMAS RAY BENJEY attorney fees and costs of this action.

Respectfully Submitted,

LAW OFFICES OF DUANE P. STONE, P.C.

By: /s Duane P. Stone

Duane P. Stone, Esq.
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VERIFICATION

The above Complaint is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation of this matter. The language of the Complaint is that of counsel and not of me. I have read the Complaint and to the extent that the Complaint is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the Complaint is that of counsel, I have relied upon counsel in making this verification. I hereby acknowledge that the facts set forth in the aforesaid Complaint are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: 5/30/08

Thomas Ray Benjey
THOMAS RAY BENJEW